IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 5786 of 2002

Between:

1 The Government of Andhra Pradesh, represented by Principal Secretary to Government, Industries & Commerce Department, Secretariat Buildings, Hyderabad.
2 The Commissioner of Industries, Hyderabad.
3 The General Manager, District Industries Centre, Ongole, Prakasam Dist.-523001.
4 The Secretary to Government, Finance & Planning Department, Secretariat, Hyderabad.

..... PETITIONERS

AND

Smt. G. Anjamma, Day Watchman, Office of the General Manager, District Industries Centre, Ongole, Prakasam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a writ particularly one in the nature of a writ of Certiorari calling for the records relating to the order of the Hon'ble A.P. Administrative Tribunal dated 13-8-2001 in O.A.No.5472/2001 and to quash the same.

Counsel for the Petitioners: GP FOR FINANCE & PLANNING

Counsel for the Respondent: MR.S.GOPAL RAO

The Court made the following:

–

–

–

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.5472 of 2001, dated 13.8.2001.

2. In the above O.A., the respondent herein challenged the order passed by the Government in GO.RT.No.278, Industries and Commerce (I.E.) Department, dated 26.4.1999, wherein her case for regularization of services was rejected. Tracing the history of the litigation right from 1996 when she filed O.A.No.7695 of 1996, as she was regularly appointed in the Last Grade Service, she was entitled for all the benefits, the Tribunal allowed the present OA filed by the respondent. Against the said order the Government has preferred the present Writ Petition.

3. The learned Government Pleader for Finance and Planning vehemently submits that so long as the respondent is not regularized in the service, she cannot claim regular scale of pay and increments as if she has been appointed on regular basis. Further he also submits that initially the respondent was appointed only as a part time sweeper and subsequently she was converted to full time Sweeper and accordingly her salary was fixed in the time scale of Rs.740-1150, but she was not regularized in service as there is no vacancy, and therefore as long as she is not regularized in accordance with G.O.Ms.No.212, Finance and Planning Department, dated 22.4.1994, she cannot claim the benefits, and thus the order of the Tribunal is not sustainable.

4. We have also heard the learned counsel appearing for the respondent.

5. The contention raised by the learned Government Pleader has been considered in extenso by the Tribunal in its order, which reads as follows:

> "In our considered view, the impugned order cannot be sustained. In proceedings of the third respondent dated 15.2.1989, it was stated that the applicant was working as Full Time Sweeper for the

past 11 years. Such post was already merged into Last Grade Service and her salary was fixed in the time scale of Rs.740-1150 and decided to pay Rs.740/- per month along with other allowances. The said order only reads that she was entitled for further increments. It cannot, thus, be said that there was no vacancy, when the respondents themselves appointed the applicant as Last Grade Servant and also granted time scale of pay. The applicant filed O.A.No.7695 of 1996 to call for the records relating to the proceedings of the third respondent bearing No.521/B1/91, dated 16.12.1996 wherein Full Time Contingent employment given to the applicant has been cancelled and to set aside the same. The said O.A. was allowed by this Tribunal. While allowing the said O.A., this Tribunal observed that the impugned order itself disclosed that the applicant has been working as Full Time Contingent Employee in a clear vacancy for more than seven years. This Tribunal further observed that the impugned order passed was against the principles of natural justice. Thus, this Tribunal in the said O.A. observed that she was appointed in a clear vacancy. Thus, the said Judgment has become final. As the respondents did not question the said Judgment in O.A.No.5661/1999, the respondents were directed to pay increments/allowances which are due to the applicant in the old scales as well as in the revised scales. The aforesaid Judgment has also become final. Above all, the Hon'ble High Court in W.P.No.15674/2000 directed the respondents to implement the orders of the Tribunal in O.A.No.5661/1999. Thus, the orders rendered by the Tribunal in all aforesaid O.As. have become final. Now the respondents are stating that the services of the applicant cannot be regularized for want of a clear vacancy. In fact, by the orders of the third respondent dated 15.2.1989 itself, the services of the applicant were merged into Last Grade Service and accordingly, her salary was fixed in the time scale of Rs.740-1150. Even otherwise also, her services are liable to be regularized in accordance with the terms and conditions of G.O.Ms.No.212, F&P, dated 22.4.1994. even assuming for a moment without conceding that she was appointed as Full Time Contingent employee with effect from 15.2.1989, she is deemed to have completed five years of continuous service. The Division Bench of A.P. High Court reported in SECRETARY, APSWREIS vs. P.VENKATA KUMARI (ALD 2001 Page 368) held that the cut off date is to be reckoned with effect from 19.8.1998 i.e., the date on which Act 27/98 did come into force and not 25.11.1993 as indicated in G.O.Ms.No.212, F&P, dated 22.4.1994. As already pointed out by us, the respondents three Judgments earlier by this Tribunal and the High Court wherein the Tribunal clearly held that the applicant was appointed in a clear vacancy and the respondents were also directed to pay her all the allowances/increments as revised from

time to time. The respondents did not question such Judgments at any point of time.

In this view of the matter, the O.A. is allowed by setting aside the impugned G.O.RT.No.278, Industries and Commerce (IE) Department dated 26.4.1999 and the respondents are directed to pay the increments and other allowances by applying the revised pay scales as revised from time to time from the date of her appointment i.e., 15.2.1989 minus the pay allowances already paid to her. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order".

6. The Tribunal has categorically found that it has recorded a finding in earlier O.A.No.7695 of 1996 that the respondent was appointed on regular basis and the order in the said O.A. has become final as it was not challenged. Even on the second ground, for application of G.O.Ms.No.212, dated 22.4.1994 to the case of the respondent, the Tribunal found that on the basis of the Judgment of this Court in SECRETARY, APSWREIS vs. P.VENKATA KUMARI[1], the respondent herein is also entitled for regularization. Though the learned Government Pleader submits that the matter with regard to the regularization of services under G.O.Ms.No.212, dated 22.4.1994 is *sub-judice* before the Supreme Court, the Tribunal ought not to have granted the relief to the respondent. We need not go into the aspect whether G.O.Ms.No.212 dated 22.4.1994 is applicable to the case of the respondent or not inasmuch the Tribunal observed that the respondent was appointed in the Last Grade Service as Sweeper. Thus, we do not find any ground to interfere with the order of the Tribunal.

7. Accordingly the Writ Petition is dismissed. No costs.

G.BIKSHAPATHY, J.

16th February, 2005.

P.S.NARAYANA, J.

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary to Government, Industries & Commerce Department, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 The Commissioner of Industries, Hyderabad.
3 The General Manager, District Industries Centre, Ongole, Prakasam Dist.-523001.
4 The Secretary to Government, Finance & Planning Department, Secretariat, Hyderabad.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad.

6 2 CCs to G.P. for Finance and Planning, High Court of A.P.

Hyderabad. (OUT)

7 2 CD copies.